

APPEAL NO. 051032
FILED JUNE 16, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 11, 2005, with the record closing on April 5, 2005. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 12% per the respondent's (carrier) required medical examination (RME) doctor's report. The claimant appealed, disputing the determination of the IR. The claimant contends that the evidence presented was not sufficient to overcome the presumptive weight afforded to the designated doctor's report. The claimant further contended that the carrier's RME doctor did not submit a valid Report of Medical Evaluation (TWCC-69) with a corresponding report and contended that the testimony presented by (Dr. C) at the CCH was not credible because Dr. C did not examine the claimant and relied on information provided by the carrier. The carrier responded, urging affirmance. The carrier argues in its response that the RME doctor's 12% IR was the only valid IR in evidence. The carrier contends that the great weight of the other medical evidence is contrary to and rebuts the designated doctor's opinion and therefore, the designated doctor's report does not have presumptive weight.

DECISION

Reversed and rendered

The parties stipulated that on _____, the claimant sustained a compensable lumbar spine injury while in the course and scope of his employment and that the claimant reached maximum medical improvement (MMI) on December 2, 2003, per the report of the designated doctor. The designated doctor assessed an IR of 18% (13% under Table 49 and 6% for range of motion) utilizing the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The 13% impairment assessed under Table 49 was based on (IV) (C) (multiple levels operated, with residual symptoms). The hearing officer found that the great weight of the other medical evidence is contrary to and rebuts the designated doctor's opinion assessment of the claimant's IR and establishes that the claimant does not have impairment relative to a surgical procedure performed at level L5-S1 on his spine on March 5, 2002. The hearing officer correctly notes that the worksheet included in the narrative report attached to the designated doctor's TWCC-69, incorrectly identifies L5-S1 as a level that was operated on. However, the narrative report itself contains a detailed explanation of the operation performed on the claimant, which is taken verbatim from the actual operative report. The operative report notes in part that lumbar laminectomies were performed bilaterally at L4-5 with partial medial facetectomies and foraminotomies of the L5 nerves; that lumbar laminectomies were performed bilaterally at L3-4 with partial medial facetectomies and foraminotomies of the L4 nerves in addition to the fusion at L4-5. It is clear from the narrative, that the designated doctor

understood the levels that were involved in the surgery of March 5, 2002. Additionally, in a letter of clarification, the designated doctor stated that were lumbar surgery involved two levels and identified the levels involved as being L3-4 and L4-5.

The hearing officer found that the carrier RME certified that the claimant's IR is 12% based on a specific disorder relative to a single level lumbar spine fusion on March 5, 2002, utilizing the AMA Guides. The evidence clearly reflects that although the fusion was to one level, multiple levels of the spine were operated on. The hearing officer's determination that the great weight of other medical evidence is contrary to the designated doctor's assessment of IR is in error.

We reverse the determination that the claimant's IR is 12% and render a determination that the claimant's IR is 18%.

The true corporate name of the insurance carrier is **SERVICE LLOYD'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge